



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-1370 FAX (603) 271-1381



July 8, 2002

Kershaw's Quick Stop, Inc
158 Rockingham Road
Derry, NH 03038

CERTIFIED MAIL (7099 3400 0003 0687 2431)
RETURN RECEIPT REQUESTED

Attn: Mr. Scott Kershaw

Re: Notice of Proposed Administrative Fine and Hearing No. AF 02-018

Dear Mr. Kershaw:

The New Hampshire Department of Environmental Services, Air Resources Division, is proposing that administrative fines totaling \$1,300 be imposed against Kershaw's Quick Stop, Inc. pursuant to RSA 125-C:15 for violations relating to the Stage II gasoline vapor recovery system.

You are required to respond to this notice. You have a right to a hearing to contest these allegations before the fine can be imposed. Please respond by August 8, 2002, using the enclosed form.

If you wish to have an informal meeting to discuss these issues, please contact the DES Legal Unit at (603) 271-6330. If you have any questions regarding this matter, please call Joseph Ritz at (603) 271-1391.

Sincerely,

COPY 

Pamela G. Monroe
Compliance Bureau Administrator
Air Resources Division

Enclosure

cc: ✓ G. Rule, DES Legal Unit
R. Kurowski, EPA Region 1
Town Council, Town of Derry



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Derry, New Hampshire 03038

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 02-019**

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Kershaw's Quick Stop, pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$1,300 be imposed against Kershaw's Quick Stop for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having in its principal office at 6 Hazen Drive, Concord, NH.
2. Kershaw's Quick Stop, Inc. is a corporation registered in the State of New Hampshire having a mailing address of 158 Rockingham Road, Derry, New Hampshire.

III. Summary of Facts and Law Supporting Claim

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. Env-A 1205.19 and 1205.20 require gasoline-dispensing facilities in Hillsborough, Merrimack, Rockingham and Strafford counties that meet certain throughput criteria to install a California Air Resources Board ("CARB") certified Stage II vapor recovery system.
4. Kershaw's Quick Stop, Inc. is a gasoline facility doing business at 158 Rockingham Road, Derry, Rockingham County, NH, 03038 ("the Facility"). The Facility meets the throughput requirements specified in Env-A 1205.19.
5. On December 29, 1997, the Air Resources Division ("Division") issued Administrative Order No. ARD 97-043 ("the Order") to the Facility for failing to install Stage II vapor recovery testing, and for not submitting the notification form and \$200 renewal fee as required by Env-A 1205.
6. On September 17, 1998 the Division issued Certificate of Compliance No. II-9800177 ("the Certificate") to the Facility.
7. Env-A 1205.27 states that a Stage II certificate of compliance shall be valid for no more than three years.

8. Env-A 1205.24(a)(2) requires the owner or operator of an applicable gasoline dispensing facility to re-test a Stage II system within 90 days prior to the expiration date of any certification of compliance issued by the Division to the owner.

9. Env-A 1205.28 requires the owner or operator of an applicable gasoline dispensing facility to pay a non-refundable renewal fee of \$200 to the Division on or before the expiration date of the certificate of compliance.

10. Env-A 1205.23 requires the owner or operator of an applicable gasoline dispensing facility to notify the Division in writing at least 5 working days prior to any proposed testing of the date and time such testing will occur, and the name of the person who is responsible for such testing.

The Facility's Certificate expired on November 1, 2000.

12. On February 6, 2001, Division personnel contacted a Facility employee by telephone and left a message for the Facility owner notifying him that the Certificate expired November 1, 2000, that the Stage II system must be re-tested, and that a \$200 renewal fee was due to the Division along with a notification form. A copy of the blank notification form was faxed to the Facility.

13. On July 10, 2001 and July 11, 2001, Division personnel again contacted a Facility employee by telephone and left a message for the Facility owner notifying him that the Stage II vapor recovery certification had expired November 1, 2000, that the equipment was required to be re-tested, and that a \$200 renewal fee was due to the Division along with a notification form. A copy of the blank notification form was faxed to the Facility.

14. On July 16, 2001, the Facility submitted to the Division the non-refundable renewal fee of \$200, and the notification form, as required by Env-A 1205.28(b).

15. On July 27, 2001, the Facility failed a Stage II vapor recovery re-test.

16. On August 6, 2001, the Facility successfully passed a Stage II vapor recovery re-test, approximately nine months after the expiration date of the Certificate of Compliance.

17. On October 1, 2001, the Division issued to the Facility Certificate of Compliance No. 2 11030113464, with an expiration date of November 1, 2003.

IV. Violations Alleged and Proposed Administrative Fines

1. Kershaw's Quick Stop, Inc. has violated Env-A 1205.24(a)(2) by failing to re-test the Stage II vapor recovery system within 90 days prior to the expiration date of the Certificate. The Division has determined that Violation 1 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of between \$1,251 and \$1,750. The Division is seeking a fine of \$1,300 for this violation.

2. Kershaw's Quick Stop, Inc. has violated Env-A 1205.28(b) by failing to pay the \$200.00 renewal fee required on or before the expiration date of the Certificate. The Division has determined that Violation 2 is a minor deviation from the requirements with minor potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of between \$100 and \$1,000. At this time, the Division is not seeking a fine for this violation.

The total fine being sought is \$1,300.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Kershaw's Quick Stop committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Kershaw's Quick Stop's opportunity to present testimony to present testimony and evidence that Kershaw's Quick Stop did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Kershaw's Quick Stop has any evidence, such as photographs, business records or other documents, that Kershaw's Quick Stop believes show that Kershaw's Quick Stop did not commit the violation(s) or that otherwise supports Kershaw's Quick Stop position, Kershaw's Quick Stop should bring the evidence to the hearing. Kershaw's Quick Stop may also bring witnesses (other people) to the hearing to testify on Kershaw's Quick Stop's behalf.

If Kershaw's Quick Stop wishes to have an informal meeting to discuss the issues, Kershaw's Quick Stop must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us/des). If Kershaw's Quick Stop has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.



Robert R. Scott
Chief Air Programs Manager
Air Resources Division

Enclosure

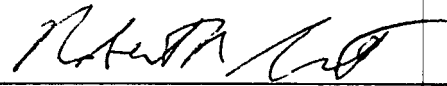
cc Gretchen Rule, DES Legal Unit
 Susan Alexant, DES Hearings and Rules Attorney
 R. Kurowski, US EPA
 Town Council, Town of Derry
 ARD Enforcement File

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